

WAYNE R. BERRY, Senior Trial Attorney, DC BN 429661
PETER B. DOLAN, Senior Trial Attorney, IL BN 0065 0285
CATHERN H. SMITH, Trial Attorney, DC BN 475586
MEGAN GUENTHER, Trial Attorney, MD Bar (numbers not used)
Office of the Solicitor, Plan Benefits Security Division
United States Department of Labor
200 Constitution Avenue, N.W., Room N-4611
Washington, D.C. 20210
Telephone: (202) 693-5600, Facsimile: (202) 693-5610
berry.wayne@dol.gov, (202) 693-5585
dolan.peter@dol.gov, (202) 693-5612
smith.cathern@dol.gov, (202) 693-5625
guenther.megan@dol.gov, (202) 693-5586

Attorneys for Plaintiff ELAINE L. CHAO
Secretary of Labor, United States Department of Labor

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ELAINE L. CHAO, Secretary of Labor,)	Civil Case No. C 04-4949 PJH (EMC)
United States Department of Labor,)	
)	Application for Motion to Shorten Time
Plaintiff,)	for Hearing and [Proposed] Order
)	
v.)	Date: Submitted on the Papers
)	Time:
LAWRENCE J. MAZZOLA, et al.,)	Court: Courtroom C, 15 th Floor
)	
Defendants.)	Magistrate Judge Edward M. Chen

Pursuant to L.R. 6-3, the Secretary makes this motion to shorten time and requests that, subject to the Court's availability, the hearing on the Secretary's Expedited Motion for Protective Order Modifying Scope of 30(b)(6) Oral Deposition be held on September 13, 2006.

1 On May 24, 2006, the Defendants represented by Jones Day served the
2 Defendants' Fourth Amended Notice of 30(b)(6) Oral Deposition. The parties have met
3 and conferred several times since that date in an attempt to resolve their differences with
4 the most recent exchanges taking place on August 17, 2006.

5
6 On August 16, 2006, the Defendants' notified the Secretary of their intent to file a
7 motion to compel. On August 17, 2006, the Secretary explained to the Defendants that in
8 order to get relief she seeks, and as a purely procedural matter, the Secretary must file a
9 motion for a protective order. The Defendants refused to agree, insisting upon filing their
10 own motion to compel.¹ To protect her interests, the Secretary is left with no choice but to
11 file an Expedited Motion for Protective Order Modifying Scope of 30(b)(6) Oral
12 Deposition accompanied by a motion to shorten time.

13
14 The Secretary would be substantially harmed if the Court were to consider a
15 motion to compel from the Defendants without considering the issues raised in the
16 Secretary's Expedited Motion for Protective Order Modifying Scope of 30(b)(6) Oral
17 Deposition. For reasons set forth in her concurrently filed memorandum in support of her
18 Expedited Motion, the Secretary takes the position that the Defendants' 30(b)(6) Notice is
19 not consistent with the Federal Rules of Civil Procedure, the needs of this case, and the
20 discovery guidance this Court provided in its August 10, 2006 Order and at the August 9,
21
22
23
24

25 ¹ Despite the inability of the parties to agree upon the filing of a single motion, the
26 Secretary will work with the Court to reduce any additional burden arising from the dual
27 motions.
28

2006 hearing on the Defendants' Motion to Compel Deposition Testimony and Production of Documents. The Defendants take the position that their 30(b)(6) Notice is appropriate.

Accordingly, subject to the Court's availability, the Secretary respectfully requests the following expedited briefing schedule:

- Defendants' Opposition Due: August 30, 2006
- Secretary's Sur-Reply Due: September 6, 2006
- Hearing: September 13, 2006

If this Motion is not heard on an expedited basis, the Secretary arguably will be required to produce one or more 30(b)(6) witnesses on October 2, 2006, thereby causing undue burden and expense.

This is the second discovery motion filed with the Court. The requested modifications to the Defendants' 30(b)(6) Notice will assist the parties in completing discovery by the November 17, 2006, discovery cut-off date.

In the event that some or all of the issues are resolved before the hearing, the Secretary will immediately notify the Court.

Dated: August 17, 2006

HOWARD M. RADZELY

Solicitor of Labor

TIMOTHY D. HAUSER
Associate Solicitor

By: 

Cathern H. Smith

Attorneys for Plaintiff
Elaine L. Chao, Secretary of Labor
United States Department of Labor

[Proposed] Order

The Court having considered the Secretary's Application for Motion to Shorten Time for Hearing on the Secretary's Expedited Motion for Protective Order to Prevent Depositions and for good cause shown, GRANTS that motion.

The Court hereby sets the dates:

- Defendants' Opposition Due: August 30, 2006
- Secretary's Sur-Reply Due: September 6, 2006
- Hearing: ~~September 13, 2006~~ September 15, 2006 at 10:30 a.m.

IT IS SO ORDERED:

Dated: August 18, 2006

